Afghanistan Constitution of 1923; Clash of Civilization

Nizāmnāma-i Asasi-e Daulat-e `Aliyah-e Afghanistan

Abstract

In 1923 the very first constitution in subcontinent was adopted in Afghanistan by Amir Amanullah, it declared independence of the country and introduced certain phenomenal reforms including free education, equality among the population irrespective of religion, creation of judicial system, grant of personal freedom, free press, it also retained monarchy and a hereditary succession. A constitution reflects the culture and ontology of the country. Afghan constitution soon put the country into a civil war and Amir Amanullah had to abdicate and flee the country. This paper analyse the making,, reforms of the constitution and its subsequent failure through the lens of historicism and concludes with the hypothesis that modern reforms in an Islamic tribal society should not be imposed through a western concept of constitution.

Keywords. Afghanistan. Constitution. Civilisation. Westernization. Modernisation. Islam. Tribalism.

Introduction.

Constitution by definition is the set of political principles by which a state is governed especially in relations to rights of the people it governs (Spiro, 2024). In almost all countries the constitution is in a written form, however United Kingdom is the sole exception where it is in form of a custom . Constitution is synonym with law and law creates an impression of rigidity; something which has to be followed irrespective of the circumstances. At present time, rule of law, democracy, distribution of powers, fundamental rights are enshrined in constitutions and once adopted a constitutional amendment is a cumbersome, time consuming and a lengthy process.

Historically one of the earliest form of laws are attributed to King Hammurabi of Assyria (Britannica 2024), they are 290 in number and regulates life of citizen on almost every subject, marriage, adultery, business, slavery, property, officialdom, judiciary; the ontological

perspective is based upon a ‘ teeth for a teeth’ . Hammurabi Laws do not treat all citizens as equal rather there is a difference among free and slaves. In Greece which is taken as the cradle of western philosophy and politics the issue of constitutions seems to be an important one. Each city state had its own constitution. Aristotle who studied them wrote the very first book on constitution, *Constitution of Athens* (1890/330 B.C.E.)), it gives a detail history of how the city states adopted constitutions and how they were corrupted. Primarily it was rule of majority and this rule of majority was responsible for the death of Socrates as narrated by Plato. (399 B.C./ 2002). Aristotle thus classified form of government basing upon his research and to him democracy was the least favoured.

Roman Empire is very rightly attributed to for formulating laws in an organised pattern. Romans had their 12 Tables, a collection of laws dating back to 500 B.C. and later Emperor Justinian in 300 A.D. formed a commission for compilation of all existing laws; which are now known as Justinian Codex[1] (Blume,2016). These laws remained as source of western laws for millennium and are still refereed in courts. Roman laws were based upon Christianity and all those who were not professing this were treated outside the laws and deprived of certain rights. Romans made judiciary a profession and thus the lawyers emerged as the interpreters of the written scripture and helped magistrates or judges in dispensing justice. Islam in 6th century emerged as a continuity of divine religions and brought new laws which were contradictory to the Roman Laws as well.

At the dawn of last millennium, world was by and large divided on the basis of religion and wars were undertaken to impose divine laws as followed by followers of particular religion. Mongols in 11th Century conquered, subjugate and almost destroyed these divine religions and resultantly Genghis Khan gave his own laws known as Vassa .. In Europe, two distinct branches of laws and judiciary emerged, in United Kingdom the judges based their judgment taking into consideration the local customs and as such are known as Common Law, whereas the other school mainly in Germany and Rome, the reliance was upon the strict adherence to the written laws and as such is known as Civil Law. (Lewis et al, 2024)

[1] The Codex of Justinian is, together with the Digest, the core of the great Byzantine compilation of Roman law called the Corpus luris Civili

In 18th Century, colonialism reached its apex with European powers subjugating the African, Asian and American population and states as their colony and introduced their own laws. In India, British were the powers and in Central Asia the Russia was the sovereign and this rivalry between these two powers put the Afghanistan into a security quagmire. There were wars between the British and Afghans in 1842, 1878 and in 1918. In 1923, Amir Amanullah presented the first ever constitution of Afghanistan. However in 1928 King Amanullah had to leave the country in the face of public unrest, he never came back and his constitution was also replaced in 1932 (Sherman,2006).

Aim of Paper

To analyse the 1923 Constitution of Afghanistan, being the first of its kind in the Sub-Continent and to find the causes of its adoption, failure and impact.

Theoretical Framework.

Much has been theorised on the concept of law and constitution, as it affects the public and state thus a wide range of theories are available to be used as the 'lens'. Greek classic theories on politics and constitution like Plato's *Republic* and Aristotle's *Constitution of Athens.* Machiavelli's *Prince* which is a standard text on the art of governance by a prince. The works of John Locke , Hobbs, and Rousseau; it is infact the latter who stated ' man is born free yet everywhere in chain' (Rousseau 1762/1999). Karl Marx who wrote that history repeats itself first as a tragedy than as farce. In last century the Critical Theory or the Frankfurt school put forward the theory of Historicism, which implies that events and actions should be seen through the historical process and culture is a paramount fact in shaping the destiny of states. This was earlier echoed by Montesquieu in his *Spirit of Laws.* Thus culture and history are the primary lens to understand the Afghanistan and the role of Amir Amanullah. Samuel Huntington in 1995 put forward the hypothesis of *Clash of Civilisation.* This hypothesis is centred around the notion that civilisations do clash and expanding Huntington's idea of civilisation,

This paper analyse the events in Afghanistan in the theoretical form of a clash between two civilisations namely the western which Amir Amanullah wanted to introduce and did so in the shape of constitution and other civilisation being the Tribal or Islamic Civilisation .

History and Culture of Afghanistan (1748 - 1917)

Afghanistan is a landlocked country, in 1923 it was bordered by Russian Central Asia on west and north, China in north-east, British India on east and Iran on south. Afghanistana s state took birth in 1748 under Ahmad Shah Abdali, however from earliest era of civilisation there are evidences that points to existence of nomadic tribes. Country is largely mountainous with little reservoir of water, no major river originates from it; thus dependence and way of life is mostly livestock, and trade. Population from earliest days have been engaged in martial activities and even today are regarded as one of the finest warriors in the world. Society is built around the nucleus of tribe and tribes are divided ethnically and are mostly at war among each other. Islam from 800 A.D. has been the main rather the only religion being practiced. Afghan tribes are divided into the two main branches of Islam, the Sunni and Shia with former being in majority. Society remained conservative throughout its history with women being confined to household, however any indignation towards women is a serious crime as per the law of the land. Traditionally the Afghans have been following to the Pakhtunwali as the customary law.

Modern History 1842-1917

British invaded Afghanistan in 1842 and 1878 bot wars had their roots in the Forward Policy and Great Game; an efforts by the British to keep the Russians away from having any influence in Afghanistan; thus Afghanistan became buffer state receiving subsidy from British India and in return surrendering its foreign policy. Afghan rulers called themselves as Amir and one family remained in power, The Barkhans with Dost Muhammad, …..Abdur Rehman, Habibullah ruling from 1842 .In 1893, British India and Afghanistan reached an agreement to have a clear cut area of interest and influence under this treaty known as Durand Treaty , Afghanistan ceded certain areas to British.

In 1917, Amir Habibullah was assassinated and his son Amanullah became the Amir of Afghanistan through a coup, he soon initiated a war known in history as Third Anglo-Afghan War, a truce was reached in 1919 and later a treaty was signed in Kabul under which the Durand

Line was rectified and British accepted the sovereignty of Afghanistan in foreign affairs. This made Amir Amanullah immensely popular.

Reforms in Afghanistan prior to Constitution. As Afghanistan remained free of colonialism thus the progress in social field was rather slow and limited. There are certain advantages of colonialism the chief being the spread of education as observed in India and Central Asia, followed by political activity, more participation of women in everyday life, increase opportunities for under privilege classes to have jobs etc. Still Afghanistan was partially affected with European way of life. The very first newspaper Shams Ul Nahar was published at Kabul in 1873 (Library Congress 1873) one example is opening of very first school at Kabul in 1911 known as Habibiya. Printing of newspapers was also allowed in 1910.

However Amir remained the all-powerful without any check or balance or sharing of the power. Only restrain on him was the religion thus alcohol was neither consumed by Amir or any of his ministers, neither it was brewed or sold openly in Afghanistan. Same holds true for the eating taboos imposed by the religion and similar restrictions on the modesty of women were enforced thus a woman was seldom allowed to be outside her home without veil or purdah.

Amir Amanullah and Queen Suriya

History of first Afghanistan's constitution and its subsequent impact and reforms revolves around Amir and his queen. Suraya was one among the twenty odd children of Mahmood Tarzai, he had married a Syrian woman while being in exile. Syria being a part of Ottoman Empire was much more liberal than Afghanistan thus Suraya and her siblings were brought up in a westernized environment. It is a matter of fate that not only she but her elder sister was also married to the royal family of Afghanistan thus these two sisters played a pivotal role in the politics of Afghanistan. (Katrak, 1929).

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The Afghan constitution was approved by 872 members of Loya Jirga the grand assembly on 9 April 1923, later it was amended by same Jirga in 1924 and new constitution with amendments became effective on 29th January 1925. However , first the non amended text will be analysed and then causes for amendments will be highlighted.

The constitution of Afghanistan rather simple in nature having only 73 clauses. The first seven clauses which may be taken as preamble deals with basic structure of the state. Afghanistan was declared as an independent and sovereign country with full autonomy in foreign affairs. Kabul was declared as the capital of the country, Amanullah was declared as the King, this was a major change from the past where the rulers used title of Amir . Furthermore the kingship was officially declared as hereditary. This was already being in use thus nothing new , yet it now made it rather binding. King's name was also binding to be used in the Friday sermon across the country (Article, 7). This is rather unique to the Islamic states where the ruler's name is , if used in the Friday sermon gives not only legitimacy but also adds religious colour to it. King Amanullah was given all the powers, of making war and peace, commander in chief of military, amnesty, rewards and punishments all at his own discretions. Thus King was the law. The most drastic was the Article 2, which gives religious freedom to the Hindus and Jews; this clause later became the bone of contention and resulted in constitutional amendment.

General Rights of the Subjects (Articles 8-24).

These sixteen articles can be termed as the reforms as they abolished slavery and torture (Articles 9 & 24) promised free education for all Afghans (Article 14) allowed printing and publication of newspapers (Article 11), granted equal rights to all citizens (Article 16) and more importantly the privacy of home was made inviolable , none can enter a house without official warrant (Article 20). In a country where slavery was the norm and torture was used freely, these articles provided reforms in true sense. Free education was a much needed and at that time a novelty for many nations thus collectively the general provisions were earth breaking in every sense.

Rest of the constitution deals with ministers, their appointments, working. Article 32 mentions that oral command from King to his ministers must be reduced to writings. Article 36 deals with government officials and they are to be selected basing on merit similarly Article 38 bounds these officials to obey only lawful command from their superiors .

Article 39 provides for the establishment of state and provincial advisory council and in Article 41, it stipulates that half of these members to be elected by the public thus paving way for the free elections although it is not mentioned explicitly. There seems to be a repetition

and duplication of authority between the state council and the ministers. Article 29 grants ministers to review the treaties and pacts with foreign states and similarly Article 49 also gives same powers to state councils to review foreign treaties.

Judiciary is granted independence under Article 53 and establishment of high court is only permissible for the trial of ministers (Article 56). Financial affairs are being regulated in the forms of taxes and yearly budget (Articles 58 &59). Provincial administration has been elaborated in detail by stressing that each and every official will work according to the clearly defined duties (Article 63). Martial Law as an option if there is a rebellion or disturbance , can be imposed in any province under Article 67.

The last six articles of constitution are termed as miscellaneous and under them elementary education is made compulsory on the subjects, privacy of correspondence is assured under Article 73. Furthermore the system of amendment in constitution is defined in Article 70.

Conclusion.

Afghan Constitution being the first of its kind in the country was unique as it was drafted and approved without any public upheaval or revolution as happened in France 1791 and in Russia 1918. The King , rather than giving up any of his powers , made the working of the country more efficient through the constitution. To understand the constitution one has to understand the personality of King Amanullah. He was young and from his subsequent actions it leaves little to argue that he was westernised rather than modernised and he failed to understand the difference between these two ways of lives.

Free education, equality before law, freedom of expression, abolishment of slavery, publication and publishing of books , privacy of home, introduction of bureaucracy, introduction of written instructions, making of budget are all signs of modernisation. However adherence to the western dress code, eating manners is not modernisation but westernisation and this was the cardinal issue which in the end terminated his reign. This was the clash of civilisation; to degrade own customs and culture and preferring the western civilisation. The Mangal rebellion in 1924 compelled King Amanullah to amend the constitution , it was a wise step on his part to act ina flexible manner. Under Article 2, Hindus and Jews were made to wear distinctive dress items

and also to pay special tax. Sunni and Hannafi sect of Islam was declared as the official sect of Afghanistan.

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